

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

SHAWN ERIC WARD, PHILLIP )  
W. MITCHELL, ISAIAH RAHEEM )  
WILDER, AUGUSTA AYERS and )  
CHRISTOPHER ANDERSON, )  
 )  
Plaintiffs, )  
 )  
vs. ) 3:06CV441  
 ) 3:08MD1932  
FAMILY DOLLAR STORES, INC., )  
 )  
Defendant. )  
\_\_\_\_\_)

This matter is before the court upon Defendant's objections to the Motions to Intervene filed on August 20, 2008 by Betty Davis, Ester Resendez and Peggy Thomas. Defendant submits that these individuals' claims are time-barred.

This case was originally filed as a class action alleging violations by the Defendant of the Fair Labor Standards Act. Approximately twenty-four individuals opted-in. On January 22, 2008, this court determined that the case was not appropriate for collective action treatment. As a result, the claims of the individuals who had filed opt-in consent forms were dismissed without prejudice. At a status hearing on June 23, 2008, the court ruled that former opt-ins who remain interested in pursuing their claims could file motions to intervene into this lawsuit within sixty days. The individuals listed above, along with others, filed motions to intervene as allowed by the court.

The limitations period for filing overtime claims under the FLSA is three years (1095 days) for willful violations. 29 U.S.C. § 255(a). This limitations period runs until each claimant

files his or her written consent to become a party plaintiff. 29 U.S.C. § 256. The Declaration of Michelle DeBrocq, filed by the Defendant in support of its opposition, sets forth the date each of these named putative intervenors last worked as a store manager. For each of these named individuals, the limitations period of 1095 days expired before they filed their original opt-in consent forms. Moreover, it appears to the court that Betty Davis's claim is also barred by the doctrine of *res judicata*, as she has previously raised identical FSLA claims against Family Dollar in the District of South Carolina which were dismissed with prejudice. As their claims are now time-barred,

IT IS THEREFORE ORDERED that the Motions to Intervene by Betty Davis, Ester Resendez and Peggy Thomas are hereby DENIED.

Signed: October 20, 2008



Graham C. Mullen  
United States District Judge

